

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the jurisdictional matter of the complaint against the property assessment as provided by the *Municipal Government Act*, Chapter M-26.1, Section 460(4).

between:

***AEC International, COMPLAINANT
#112, 1212 – 1 Street SE
Calgary, AB T2G 2H8***

and

The City of Calgary, RESPONDENT

before:

David Thomas, PRESIDING OFFICER

This is a decision of a single member panel of the Composite Assessment Review Board (CARB) of Calgary from a hearing held on May 10, 2010, to determine the validity of a complaint filed respecting:

Roll No:	065078404
Address:	1200 – 37 Street SW, Calgary
Amount:	\$61,200,000

This complaint was heard on 10 day of May 2010 at the office of the Assessment Review Board located at 4 Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 7.

Appeared on behalf of the Complainant:

- *Bridgitte Soulier*

Appeared on behalf of the Respondent:

- *Ms. Kelly Hess, Senior Assessor*
- *Mr. Scott Powell, Assessor*

Issues:

The City of Calgary asks that this complaint be dismissed, as it does not comply with the requirement of Section 5 of the complaint form in that the complainant has not given the necessary information as to what was incorrect in the assessment notice, or what the correct information may be. The City says that the complainant has not given grounds for any issues that an appeal panel would need to resolve the complaint. Section 9(1) of MRAC bars the hearing of any matter in support of an issue not disclosed in the complaint form.

The City further argues that AEC has not filed an agency agreement (AACA) and therefore has no right to have filed a complaint on behalf of this party. The City argues the clear wording of Section 51 MRAC and the complaint form both indicate that a failure to complete and file the AACA with the complaint disqualifies any consideration of this complaint from hearing.

Finally, the City notes that AEC filed a single complaint form on behalf of four different clients. This, the City says, is improper. There must be a separate complaint for each potential claimant having an interest in this property. As such, this complaint is deficient and must be dismissed.

The tax agent for AEC argues that AEC did not complete the AACA because the literal wording of the document did not appear to contemplate the right of complaint of a commercial tenant in a mall. AEC's clients are not the assessed persons and there was no sure way to secure the agreement of the assessed persons as they hold a different interest in the property.

The agent acknowledges that AEC's clients are taxpayers under the City Business Tax Bylaw, but they did not contemplate that the wording of Section 51 MRAC included the tenants' interest. Left with only four days to protect their clients before the complaint deadline, AEC elected to file the complaint and then notify the City of their role as agent.

AEC states that they have completed Section 5 of the complaint form to the best of their ability. The problem is that they are barred from seeking information from the assessment department about the assessment. The assessor refuses disclosure as AEC does not represent the assessed person and has no consent from the assessed person. This means tenants may have a right to complain, but apparently no right to get the necessary information to prepare a proper complaint or to proceed upon it. They ask for an order of disclosure.

Finally, AEC responds to the City's argument that they could not include multiple tenants in a single complaint by saying this was the first they heard of this concern and they were not prepared to address it as it was not part of the City's case exchanged seven days prior to this hearing.

Board Findings on Each Issue:

The complaint is valid and may be set for hearing.

Board's Decision:

Agency notification is not made a part of, or prerequisite to, the essential components of an assessment complaint set out in Section 460(7) of the Act. It is, however, integral to the process of proceeding with a complaint under the regulation of MRAC.

The regulations seek the laudable goal of expediting the complaint process by using standardized forms to quickly give the assessor both confirmation of agency and knowledge of the issue upon which the complaint is founded. This process is with a view to resolution by negotiation or hearings, either of which must be resolved by the end of the assessment year.

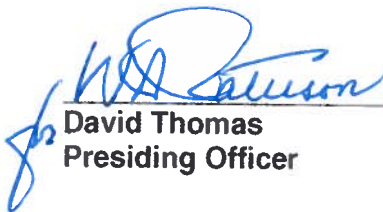
The Board accepts the agent's concerns that the literal reading of Section 51 MRAC, and the forms for filing, may have created an uncertainty of how an agent acting for a tenant is to comply. The steps taken here -- to file before the impending deadline, and then forward notification of agency to the assessor later -- appear, under the circumstances, to be an appropriate course of action to ensure the preservation of the right to complain, as well as to impart timely notifications of agency to the assessor.

The City's allegation that the complaint discloses no grounds for the issue it raises also must fail. The position of a tenant in proceeding on a complaint is somewhat more difficult than that of the assessed person because, being denied access (even to the assessment summary or pro forma for the property) makes it difficult to add specifics to the grounds supporting the appeal. This means the tenant of the property may require an order for disclosure to assist in getting the necessary information for a properly completed complaint.

The Board finds the supporting grounds are sufficient for this complaint. If there is the right of complaint, there must also be the right to disclosure to pursue that complaint.

The last matter raised by the City, that is, including multiple parties in one complaint, was not raised in the materials exchanged. As such, under the rules of MRAC, the Board did not hear argument or evidence on this issue and can make no ruling upon it. If this is to continue as an issue between the parties, a separate application will need to be made to resolve it.

MAILED FROM THE CITY OF CALGARY THIS 2 DAY OF June 2010.



David Thomas
Presiding Officer

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*